

ESTTA Tracking number: **ESTTA775148**

Filing date: **10/06/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Herbaceuticals, Inc.
Granted to Date of previous extension	10/12/2016
Address	35 Executive Ct. Napa, CA 94558 UNITED STATES
Attorney information	Karin Segall Leason Ellis LLP One Barker Avenue White Plains, NY 10601 UNITED STATES tmdocket@leasonellis.com, segall@leasonellis.com

Applicant Information

Application No	87002523	Publication date	06/14/2016
Opposition Filing Date	10/06/2016	Opposition Period Ends	10/12/2016
Applicant	Joryka LLC 4425 W. Brigestone Dr. Cedar Hills, UT 84062 UNITED STATES		

Goods/Services Affected by Opposition


Class 005. First Use: 0 First Use In Commerce: 0
All goods and services in the class are opposed, namely: Dietary and nutritional supplements


Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3809192	Application Date	04/29/2009
Registration Date	06/29/2010	Foreign Priority Date	NONE
Word Mark	HERBACEUTICALS, INC. HCI		

Design Mark	
Description of Mark	The mark consists of stylized words "HERBACEUTICALS, INC." and the letters "HCI" superimposed inside a circle.
Goods/Services	Class 003. First use: First Use: 1992/12/29 First Use In Commerce: 1992/12/29 Cosmetics, namely, body and facial skinlotions, creams and powders, body and facial skin cleansers, bath oils and beads, shampoos and conditioners

U.S. Registration No.	2822094	Application Date	11/14/2001
Registration Date	03/16/2004	Foreign Priority Date	NONE
Word Mark	HCI HERBACEUTICALS, INC.		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1986/12/31 First Use In Commerce: 1987/12/31 retail and wholesale distributorship services in the field of homeopathic preparations, cosmetics, dietary supplements and wellness products

U.S. Registration No.	3376708	Application Date	10/11/2001
Registration Date	02/05/2008	Foreign Priority Date	NONE
Word Mark	HERBACEUTICALS, INC. NATURPHARMACY		
Design Mark	HERBACEUTICALS, INC. NATURPHARMACY		
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2000/12/06 First Use In Commerce: 2000/12/06 Retail gift shop featuring homeopathic preparations, cosmetics, dietary supplements, and wellness products		

Attachments	77725380#TMSN.png(bytes) 76336998#TMSN.png(bytes) 76323514#TMSN.png(bytes) Notice of Opposition Herbatanicals.PDF(107081 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/karinsegall/
Name	Karin Segall
Date	10/06/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

HERBACEUTICALS, INC.)	
)	
Opposer,)	
)	Opposition No. _____
v.)	Application Ser. No. 87002523
)	Published in the Official Gazette on
JORYKA LLC)	June 14, 2016
)	Filing Date: April 15, 2016
Applicant.)	



NOTICE OF OPPOSITION

Herbaceuticals, Inc. ("Opposer"), a corporation duly organized and existing under the laws of the state of California and having its principal place of business at 35 Executive Ct, Napa, California, 94558 believes it will be damaged by the registration of the designation HERBATANICALS, as shown in Application Serial No. 87002523 (the "Application") for use in connection with "dietary and nutritional supplements," (the "Applied-for Goods") filed by Joryka LLC ("Applicant") and hereby opposes the same. An extension of time to oppose the Application has been granted until October 12, 2016 on behalf of Opposer.

The grounds for opposition are:

1. Opposer, established in 1989, is a well-known manufacturer and distributor of a wide variety of products, including but not limited to cosmetics, skin and hair care products and dietary supplements.
2. Since at least as early as 1992, Opposer has used the name and mark HERBACEUTICALS in connection with cosmetics, skin and hair care products and dietary supplements.
3. Opposer is the owner of the HERBACEUTICALS mark for use with a variety of cosmetics, hair care and skincare products, including the following U.S. registrations, all of which were obtained

based on a claim that the term HERBACEUTICALS has acquired distinctiveness. All three registrations are in full force and effect and are incontestable:

TRADEMARK	REGISTRATION DATE	REGISTRATION NUMBER	GOODS/SERVICES
	June 29, 2010	3,809,192	Cosmetics, namely, body and facial skin lotions, creams and powders, body and facial skin cleansers, bath oils and beads, shampoos and conditioners
	March 16, 2004	2,822,094	retail and wholesale distributorship services in the field of homeopathic preparations, cosmetics, dietary supplements and wellness products
HERBACEUTICALS, INC. NATURPHARMACY	February 5, 2008	3,376,708	Retail gift shop featuring homeopathic preparations, cosmetics, dietary supplements, and wellness products.

(The HERBACEUTICALS mark together with the marks covered by the above registrations are collectively referred to herein as the “HERBACEUTICALS Marks.”)

4. Upon information and belief, as a result of the long, extensive and widespread use, advertising, promotion and registration of the name and mark HERBACEUTICALS on an in association with Opposer’s products, consumers have come to associated such name and mark substantially exclusively with Opposer.

5. Opposer’s rights in the HERBACEUTICALS Marks long pre-date the April 15, 2016 filing date of the Application, which Application was filed based on intent to use pursuant to Section 1(b) of the Lanham Act.
{02974/609461-000/01580857.1}

6. Upon information and belief, Opposer's rights in the HERBACEUTICALS Marks long pre-date any first use date Applicant may claim in relation to HERBATANICALS.

7. Upon information and belief, the Applied-for Goods are related or virtually identical to those products offered by Opposer in connection with the HERBACEUTICALS Marks.

8. Upon information and belief, the Applied-for Goods will be encountered by the same or similar class of purchasers who are familiar with and interested in the products offered by Opposer in connection with the HERBACEUTICALS Marks.

9. Upon information and belief, Applicant's HERBATANICALS mark so resembles Opposer's HERBACEUTICALS Marks such that consumers are likely to conjure an association between Applicant's HERBATANICALS mark and Opposer's HERBACEUTICALS Marks and are likely to be confused, mistaken and deceived into believing that Applicant's goods/services are provided, sponsored, licensed or approved by Opposer, that Applicant's and Opposer's goods emanate from the same source and/or that Applicant is in some other fashion connected or associated with Opposer, all to Opposer's injury.

10. Registration of the Application by Applicant is barred by the provisions of 15 U.S.C. §1052(d), for the reason that it consists of or comprises a mark which so resembles Opposer's HERBACEUTICALS Marks as to be likely, when applied to the goods of Applicant, to cause confusion, mistake or to deceive.

11. For these reasons, Opposer would be damaged by the registration of the Application WHEREFORE, Opposer respectfully requests that the Application be rejected, that no registration be issued thereon to Applicant, and that this opposition be sustained in favor of Opposer.

Pursuant to 37 C.F.R. §2.101 Opposer has served a copy of the Notice of Opposition on the Applicant identified on the USPTO's TARR database by first class mail on October 6, 2016. A copy of the Certificate of Service is attached.

The required fee of \$300.00 is enclosed.

{02974/609461-000/01580857.1}

LEASON ELLIS LLP

By: /Karin Segall/

Karin Segall

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Herbaceuticals, Inc.

CERTIFICATE OF SERVICE

It is hereby certified that a true and complete copy of the foregoing NOTICE OF OPPOSITION was served by first-class mail, postage pre-paid, upon Applicant at the following address:

Joryka LLC
4425 W. Brigestone Dr.
Cedar Hills, UTAH 84062

Dated: October 6, 2016

_____/Karin Segall/
Karin Segall